



**IN THE INCOME TAX APPELLATE TRIBUNAL,  
CUTTACK 'SMC' BENCH, CUTTACK**

**BEFORE SHRI GEORGE MATHAN, JUDICIAL MEMBER**

**ITA No.232/CTK/2023**

Assessment Year : 2013-14

M/s. Subhadra Jewellery, At/PO: Pattamundai, Dist: Kendrapara	Vs.	Income Tax Officer, Kendrapara kendrapara	Officer, Ward,
PAN/GIR No.AAWFS 5590 F			
<b>(Appellant)</b>	..	<b>( Respondent)</b>	

Assessee by : S/Shri P.K.Mishra, Adv/Himansu Bhusan Jena  
Revenue by : Shri S.C.Mohanty, Sr DR

**Date of Hearing : 13/11/2023**  
**Date of Pronouncement : 13/11/2023**

**ORDER**

This is an appeal filed by the assessee against the order of the Id CIT(A)-2, Bhubaneswar, dated 17.3.2023 in Appeal No.Cuttack/10065/2016-17 for the assessment year 2013-14.

2. S/Shri P.K.Mishra and Himansu Bhusan Jena, Id ARs appeared for the assessee and Shri S.C.Mohanty, Id Sr DR appeared for the revenue.

3. It was submitted by Id AR that the assessee is a partnership firm, which is deriving income from gold and silver ornaments. There was a survey on the premises of the assessee on 17.4.2012. It was the

submission that in the course of survey, statement had been recorded, in which the assessee had agreed to offer an income of Rs.6,50,000/-, on which tax liability was calculated at Rs.2,00,000/-. It was the submission that when filing the return of income, the assessee had in fact shown an amount of Rs.7,05,250/- as income from job works and after reducing the interest on the partners capital and deduction towards salary paid to the partners, had arrived at taxable income of Rs.3,30,896/-, which had resulted as tax liability of Rs.1,02,374/-, which was also paid. It was the submission that the Assessing officer on the ground that the assessee had given a statement offering an income of Rs.6,50,000/- and tax therefrom having agreed to pay of Rs.2 lakhs and same having not been paid of Rs.2 lakhs but paid only Rs.1 lakh, had determined the assessment and made an addition of Rs.2,56,350/- representing the alleged shortfall in the stock as found on the date of survey. It was the submission that as on 31.3.2012, the value of the stock as disclosed by the assessee was Rs.40,24,617/- and in the course of survey on 17.4.2012, the value of stock found was only Rs.11,77,286/-. Consequently, the Assessing Officer determined the difference of Rs.25,63,503/- as undisclosed sales and adopted 10% as profit and brought the same to tax. It was the submission that further the AO on the ground that on the statement the assessee had disclosed Rs.6,50,000/- towards block of assets and the actual having been only Rs.39,704/-, brought to tax the difference of Rs.6,10,296/- as the undisclosed

investments made by the assessee. It was the submission that the Assessing Officer failed to consider the fact that certain portion of the goods of the assessee were with Karigaras. It was the submission that the affidavit to the effect had also been produced before the CIT(A). It was the submission that the addition of Rs.2,56,350/- is liable to be deleted.

4. In regard to the addition of Rs.6,10,296/-, it was the submission that the assessee itself has disclosed job works receipts of Rs.7,05,250/- and this encompasses the disclosure of Rs.6,50,000/- and addition as made by the AO at Rs.6,10,296/- was uncalled for. It was the prayer that the addition made by the AO and confirmed by the Id CIT(A) is liable to be deleted.

5. In reply, Id Sr DR filed a paper book. It was the submission that a perusal of the return of income filed by the assessee clearly showed that the assessee has shown expenses towards the interest paid and the salary paid as not being paid to the partners but to employees. It was the submission that the return filed itself shown contrary entries insofar as part of the details furnished showed that the assessee was maintaining books of account while second part of the return showed that the assessee was not maintaining its books of account. It was the submission that this clearly shows that the Assessing Officer had determined that the assessee has not disclosed the amount as disclosed in the course of survey in the return filed. It was the submission that even in the course of survey, the assessee has

not mentioned anything about the shortfall of the stock. It was the further submission that the disclosure of Rs.6,50,000/- as made by the assessee was in regard to the investment in the show room of the assessee but the net block of assets as on 31.3.2012 shown in the books of account of the assessee was having value of Rs.39,704/- and in the return of income filed, the amount was shown at Nil. It was the submission that the addition made by the AO and confirmed by the Id CIT(A) is liable to be confirmed. He has also placed reliance on the decision of the Hon'ble High Court of Bombay in the case of Dr. Dinesh Jain vs ITO, 363 ITR 210 (Bom). He submitted that the statement recorded u/s.133A does not lose its evidentiary value merely because it is made on oath.

6. I have considered the rival submissions. A perusal of the facts in the present case clearly shows that two additions are in dispute in this appeal. One is the addition of Rs.2,56,350/- representing the estimated profit at 10% which is the percentage disclosed by the assessee in respect of the shortfall of the stock found in the course of survey. It is true that the assessee may have filed the affidavit to support his claim that the stock was available with Karigaras. However, it is only a plausible explanation. The assessee has not been able to produce any stock book to show that the stock was available with the Karigaras. The facts clearly shows that the affidavit has been produced before the Id CIT(A). These are in the nature of additional evidence, which would have been worthwhile for the Id CIT(A)

to call for a remand report in that matter. However, the Id CIT(A) in his wisdom has decided not to call for the remand report as there was no evidence in the course of assessment. This being so, as the assessee has not been able to substantially prove the shortfall in the closing stock represented the material available with the Karigars, the addition as made by the Id AO and confirmed by the Id CIT(A) stands confirmed.

7. Coming to the second issue of addition of Rs.6,10,296/-, a perusal of the statement recorded shows that the addition of Rs.6,50,000/- has been offered by the assessee to buy peace. There was no concept to buying peace itself in the income tax. A perusal of the statement recorded also shows that the survey party has not pointed out any undisclosed asset nor such assets found by the survey party being valued for determining the value of Rs.6,50,000/-. It is further noticed that there was no disclosure by the assessee in respect of shortfall, if any, in regard to the assets. Even otherwise, the assets do not relate to the impugned assessment year. In these circumstances, I am of the view that the addition of Rs.6,10,296/- is unsustainable and consequently, stands deleted.

8. In the result, appeal filed by the assessee stands partly allowed.

Order dictated and pronounced in the open court on 13/11/2023.

Sd/-  
**(George Mathan)**  
**JUDICIAL MEMBER**

Cuttack; Dated 13/11/2023

B.K.Parida, SPS (OS)

**Copy of the Order forwarded to :**

1. The Appellant : M/s. Subhadra Jewellery,  
At/PO: Pattamundai, Dist: Kendrapara
2. The Respondent: Income Tax Officer,  
Kendrapara Ward, kendrapara
3. The CIT(A)-2, Bhubaneswar
4. Pr.CIT-2, Bhubaneswar.
5. DR, ITAT, Cuttack
6. Guard file.  
//True Copy//

**By order**

Sr.Pvt.secretary  
**ITAT, Cuttack**